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17 **UNITED STATES DISTRICT COURT**
 18 **CENTRAL DISTRICT OF CALIFORNIA**

19 In re

20 INDYMAC BANCORP, INC., a
 Delaware corporation,

21 Debtor.

22 INDYMAC MBS, INC., a Delaware
 corporation,

23 Plaintiff,

24 v.

25 ACE AMERICAN INSURANCE
 26 COMPANY, a Pennsylvania corporation;
 27 ZURICH AMERICAN INS. CO., a
 Delaware corporation; TWIN CITY FIRE
 28 INS. CO., a Delaware corporation;

Case No.

CV 11-02950 *RGK*
 Bankr. Case No. 2:08-bk-21752-BB

Adv. Pro. No.: 2:11-ap-01820-BB

**(1) NOTICE OF MOTION AND
 MOTION OF ABC CARRIERS TO
 WITHDRAW THE REFERENCE
 TO THE BANKRUPTCY COURT
 (2) MEMORANDUM OF POINTS
 AND AUTHORITIES**

Date: May 16, 2011

Time: 4:00 a.m.

FILED
 11 APR -7 PM 3:31
 CLERK U.S. DISTRICT COURT
 CENTRAL DIST. OF CALIF.
 LOS ANGELES

1 CONTINENTAL CASUALTY CO., a
2 Delaware corporation; XL SPECIALTY
3 INS. CO., a Delaware corporation; ARCH
4 INS. CO., a Delaware corporation; AXIS
5 INSURANCE CO., a Delaware
6 corporation; CERTAIN
7 UNDERWRITERS AT LLOYDS OF
8 LONDON, an unincorporated
9 association; FEDERAL INS. CO.,
10 a New Jersey corporation; NATIONAL
11 UNION FIRE INS. CO. OF
12 PITTSBURGH PENNSYLVANIA, a
13 Delaware corporation; LEXINGTON
14 INS. CO., a Delaware corporation;
15 CATLIN INS. CO., LTD., a United
16 Kingdom corporation; MICHAEL W.
17 PERRY; A. SCOTT KEYS; LOUIS E.
18 CALDERA; LYLE E. GRAMLEY;
19 HUGH M. GRANT; PATRICK C.
20 HADEN; TERRANCE G. HODEL;
21 ROBERT L. HUNT, II; LYDIA H.
22 KENNARD; BRUCE G. WILLISON;
23 JOHN OLINSKI; S. BLAIR
24 ABERNATHY; RAPHAEL BOSTIC;
25 SAMIR GROVER; SIMON HEYRICK;
26 VICTOR H. WOODWORTH;
27 LYNETTE ANTOSH; SCOTT VAN
28 DELLEN; RICHARD KOON;
KENNETH SHELLEM; WILLIAM
ROTHMAN; JILL JACOBSEN and
KEVIN CALLAN,

Defendants.

1 I, Justine M. Daniels, declare:

2
3 1. I am an attorney in the law firm of O'Melveny & Myers LLP, counsel to
4 Defendants Those Certain Underwriters At Lloyd's, London and Catlin Insurance
5 Company (UK) Ltd., Subscribing to Policy No. QA011608, Twin City Fire
6 Insurance Company, Continental Casualty Company, and Zurich American
7 Insurance Company (collectively, the "ABC Carriers"). I submit this declaration in
8 support of the Motion of the ABC Carriers to Withdraw the Reference to the
9 Bankruptcy Court for Adversary Proceeding No. 2:11-01820-BB (the "Motion").
10 Unless otherwise stated, the matters in this declaration are based upon my own
11 personal knowledge or upon my review of the record in the above-captioned
12 adversary proceeding (this "Adversary Proceeding"), *In re IndyMac*, case no. 08-
13 21752-BB (the "Bankruptcy Case"), and other related actions. I am over the age of
14 eighteen years and if called as a witness, I could and would testify competently
15 hereto under oath.

16
17 2. Prior to declaring bankruptcy, certain directors and officers insurance
18 policies (the "Policies") were issued to IndyMac Bancorp, Inc. (the "Company" or
19 the "Debtor") to provide—subject to their terms, conditions, and exclusions—
20 coverage for certain directors and officers of the Company and its subsidiaries (the
21 "Ds & Os"). The Policies cover two policy years—March 1, 2007 to March 1,
22 2008 (styled, the "First Tower") and March 1, 2008 to April 1, 2009 (styled, the
23 "Second Tower").

24
25 3. The Second Tower is comprised of four multi-purpose policies ("the Side
26 ABC Policies"). Insurance Policy No. 509/QA011608 issued by Those Certain
27 Underwriters At Lloyd's, London and Catlin Insurance Company (UK) Ltd.,
28 Subscribing to Policy No. QA011608 (the "Primary Policy") functions as the

1 primary policy for the Side ABC Policies. A true and correct copy of the Primary
2 Policy is attached to hereto as **Exhibit 1**.

3
4 4. The Second Tower also provides coverage exclusively for direct loss
5 incurred by the Ds & Os ("Side A Only Policies"). Insurance Policy No. ELU
6 103295-08 issued by XL Specialty Insurance Company ("XL Specialty") functions
7 as the primary policy for the Side A Only Policies (the "XL Specialty Policy"). A
8 true and correct copy of the XL Specialty Policy is attached hereto as **Exhibit 2**.

9
10 5. On October 28, 2008, the United States Bankruptcy Court for the Central
11 District of California (the "Bankruptcy Court") held a hearing on the Motion of
12 Current and/or Former Directors and Officers for Determination that Insurance
13 Proceeds Are Not Subject to the Automatic and/or Relief from the Automatic Stay
14 Under 11 U.S.C. § 362. True and correct copies of the relevant portions of the
15 transcript of that hearing are attached hereto as **Exhibit 3**.

16
17 6. On November 26, 2008, Louis E. Caldera, Hugh M. Grant, Terrance G.
18 Hodel, Robert L. Hunt II, and Lydia H. Kennard filed Proofs of Claim in the
19 Bankruptcy Case (the "Directors Proofs of Claim"). True and correct copies of the
20 Directors Proofs of Claim are attached hereto as **Exhibit 4**.

21
22 7. On December 15, 2006, the Bankruptcy Court entered the Order
23 Approving Stipulation Resolving Motions of Current and/or Former Directors and
24 Officers for Determination that Insurance Proceeds Are Not Subject to the
25 Automatic and/or Relief from the Automatic Stay Under 11 U.S.C. § 362 in the
26 Bankruptcy Case (the "Stipulation"). A true and correct copy of the Stipulation is
27 attached hereto as **Exhibit 5**.

28

1 8. On August 11, 2009, the Bankruptcy Court entered the Order Approving
2 Stipulation Resolving Motion for an Order Adding Kenneth Shellem and Richard S.
3 Koon, II to Stipulation and Granting Further Relief from Stay to Access Insurance
4 Proceeds in the Bankruptcy Case, Docket No. 352 (the "August '09 Order"). A true
5 and correct copy of the August '09 Order is attached hereto as **Exhibit 6**.

6
7 9. On June 2, 2010, the Bankruptcy Court entered the Order Approving
8 Stipulation Extending Prior Orders Granting Relief from Stay to Access Insurance
9 Proceeds and Granting Further Relief in the Bankruptcy Case, Docket No. 456 (the
10 "June '10 Order."). A true and correct copy of the June '10 Order is attached
11 hereto as **Exhibit 7**.

12
13 10. On January 12, 2011, Ace American Insurance Company ("ACE") filed
14 a complaint for declaratory relief in *ACE American Insurance Company v. Perry et*
15 *al.*, No. BC452871 in the Superior Court of the State of California for the County of
16 Los Angeles. That action was removed to the Bankruptcy Court on February 10,
17 2011 and voluntarily dismissed by ACE on March 3, 2011.

18
19 11. On February 2, 2011, the Alfred H. Siegel, in his capacity as the Chapter
20 7 Trustee for the Debtor (the "Trustee") filed a complaint for declaratory relief in
21 *Siegel v. Certain Underwriters at Lloyds of London*, case no. 11-ap-01443-BB (the
22 "Trustee's Coverage Complaint") in the Bankruptcy Court (the "Trustee's
23 Coverage Action"). A true and correct copy of the Trustee's Coverage Complaint,
24 without exhibits, is attached hereto as **Exhibit 8**.

25
26 12. On February 23, 2011, the Federal Deposit Insurance Corporation
27 ("FDIC")—as receiver for IndyMac MBS, Inc.—filed a complaint for declaratory
28 relief in *IndyMac MBS, Inc. v. Ace American Ins. Co. et al.*, case no. BC-455772

1 (the “Original FDIC Complaint”) in the Superior Court of the State of California
2 for the County of Los Angeles (the “FDIC Coverage Action”), which is the subject
3 of the Motion. The Original Complaint did not name the Trustee as a defendant. A
4 true and correct copy of the Original FDIC Complaint without exhibits is attached
5 hereto as **Exhibit 9**.

6
7 13. The FDIC Coverage Action was removed to the Bankruptcy Court
8 March 16, 2011 by Michael W. Perry, the former Chairman of the Board and Chief
9 Executive Officer of the Company. A true and correct copy of the Notice of
10 Removal without exhibits is attached hereto as **Exhibit 10**.

11
12 14. On March 17, 2011, certain other Ds & Os filed the Individual
13 Defendants’ Joinder in Notice of Removal.

14
15 15. On March 31, 2011, an amended complaint was filed in the FDIC
16 Coverage Action (the “FDIC Amended Complaint”). The principal change in the
17 FDIC Amended Complaint was to add the Trustee as a defendant. A true and
18 correct copy of the FDIC Amended Complaint without exhibits is attached hereto
19 as **Exhibit 11**.

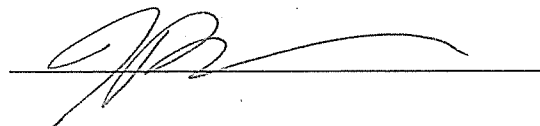
20
21 16. On March 10, 2011, XL Specialty, Arch Insurance Company, ACE, and
22 Axis Reinsurance Company (collectively, the “Side A Carriers”)—filed a complaint
23 for declaratory relief in *XL Specialty Insurance Co. et al v. Michael W. Perry et al.*,
24 case no 11-cv-02078-GHK-JCG (the “Side A Complaint”) in this Court (the “Side
25 A Coverage Action”). A true and correct copy of the Side A Complaint without
26 exhibits is attached hereto as **Exhibit 12**.

27
28 17. On March 28, 2011, I personally participated in a telephonic meet and

1 confer held pursuant to Local Rule 7-3 regarding the filing to the Motion. While
2 the parties were unable to reach a resolution regarding withdrawal of the reference,
3 all agreed that the Trustee's, FDIC, and the Side A Coverage Actions should be
4 consolidated before one court.

5
6 I declare under penalty of perjury under the laws of the United States
7 that this testimony is true and correct.

8
9 Executed this 7th day of April 2011 in Los Angeles, California.

10
11 A handwritten signature in black ink, appearing to be 'JD', is written over a horizontal line.

12 Justine M. Daniels
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